Gordon v. Impulse Marketing Group Inc Doc. 86 Att. 1

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MAY 17 2004

JAMES R. LARSEN, CLERK
DEPUTY
YAKIMA, WASHINGTON

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

JAMES S. GORDON, JR., Plaintiff, vs. COMMONWEALTH MARKETING GROUP, INC. Defendant.	No. CV-04-5003-AAM **SCHEDULING ORDER**

A telephonic scheduling conference was conducted on May 13, 2004. Douglas E. McKinley, Jr., Esq., appeared for plaintiff. Randy Gainer, Esq., appeared for defendant. As outlined by the Court during the conference, the following schedule shall apply in this case:

1) The jury trial shall commence on **September 6, 2005** at 9:30 a.m. in Richland, Washington.

2) Each party shall exchange the material identified in Fed. R. Civ. P. 26(a)(2)(B) by **June 24, 2005**. Materials pertaining to rebuttal expert witnesses shall be disclosed within 30 days after the disclosure made by the other party, as set forth in Fed. R. Civ. P. 26 (a)(2)(C). No materials identified in Fed. R. Civ. P.

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26(a)(2)(B) or (C) shall be filed with the Court. **The parties may modify this deadline for exchange of expert disclosures by joint stipulation; this stipulation shall be filed with the Court.**

3) All discovery shall be completed on or before **June 17, 2005**. The requesting party shall consult Fed. R. Civ. P. 26 through 37 to ensure that all discovery responses shall be received on or before this deadline. The parties are reminded that Fed. R. Civ. P. 26 applies in its entirety (including amendments of December 1993) to this case. **The parties are reminded that under Fed. R. Civ. P. 29, they may by written stipulation modify discovery procedures.**[1] **However, the parties must obtain leave of the court to extend the discovery cut-off date.** The parties shall file no discovery materials except as necessary to support motions.

4) Each party shall file and serve a final witness list on or before **July 1, 2005**. These lists shall contain the name, address and a summary of each witness' testimony. These lists shall not be supplemented, except for rebuttal, without leave of the Court to prevent manifest injustice. The discovery costs, including attorney fees, of any witness listed but not called to testify shall be borne by the party and/or attorney so listing the uncalled witness, subject to review by the Court to prevent manifest injustice.

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[1] The parties are bound by the Federal Rules of Civil Procedure and this court's local rules regarding the maximum number of interrogatories, requests for production, requests for admissions and the time for responding to the same. This is also true regarding the number and length of depositions. Counsel can stipulate to modify these procedures or, if necessary, file a motion seeking an order from the court to modify the procedures.

5) Final exhibit lists shall be filed and served and exhibits made available to the opposing party for inspection (or copies provided) on or before **July 1, 2005**. All exhibits shall be pre-marked BY THE SUBMITTING PARTY. Plaintiff shall utilize exhibit numbers 1 through 99. Defendant shall utilize numbers 100 through 199.

6) Objections to exhibits shall be filed and served on or before **July 8, 2005**, and two copies of the exhibit(s) to which objections are filed shall be furnished by the objecting party, together with a brief summary of the basis for the objection(s).

7) Designation of substantive, as opposed to impeachment, deposition testimony shall be by highlighting and shall be served on or before **July 15, 2005**. Cross-designations by highlighting in a different color shall be served on or before **July 25, 2005**. Objections to any designated deposition testimony shall be filed and served on or before **August 5, 2005**. Copies of designations to which there are objections shall be provided to the court on or before **August 5, 2005**.

8) All dispositive motions, including **motions for summary judgment**, shall be filed, served and disposed of prior to **July 15, 2005**; **all other motions** shall be filed, served and disposed of prior to **July 22, 2005**. To insure compliance with this paragraph, the parties must consult LR 7.1 regarding the timeline for filing and briefing motions.

9) The pretrial conference will be held on **August 26, 2005** at **11:00 a.m.** in **Yakima, Washington**. If an agreed pretrial order has been filed at least one week prior to that date, the pretrial

conference will be canceled, unless a party indicates that a conference remains necessary. If the parties cannot agree on a joint pretrial order, each should file their respective proposed pretrial orders one week prior to the pretrial conference date. Counsel should consult LR 16.1 for the required form and content of pretrial orders.

10) Trial briefs, proposed voir dire and jury instructions shall be filed and served on or before **August 30, 2005**

IT IS SO ORDERED. The District Executive is directed to enter this Scheduling Order and forward copies to counsel.

DATED this 17th of May, 2004.

ALAN A. McDONALD
Senior United States District Judge

DOUGLAS E. MCKINLEY, JR.
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August 9, 2004

RECEIVED
AUG 1 2 2004
Randy Gainer

Mr. Randy Gainer
Davis Wright Tremaine LLP
2600 Century Square – 1501 Fourth Avenue
Seattle, Washington 98101-1688

VIA Regular Mail

Re: JAMES S. GORDON, JR. vs. AMERICAN HOMEOWNERS ASSOCIATION Docket NO. CV-04-5002-AAM

and

JAMES S. GORDON, JR. vs. COMMONWEALTH MARKETING GROUP, INC. Docket NO. CV-04-5003-AAM

Dear Mr. Gainer:

Please find enclosed the Plaintiff's initial disclosures in each of the above captioned matters. Thank you for providing the Defendant's initial disclosures. Would you be willing to simply mail me copies of the papers in your possession referenced therein, or will I need to formalize my request? Also, I would like to begin to schedule depositions of your client's employees. Please provide me with dates when you would be available.

Sincerely,

Douglas E. McKinley

cc: J. Gordon

The Honorable Alan A. McDonald

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RECEIVED
AUG 1 2 2004
Randy Gainer

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT RICHLAND

JAMES S. GORDON, JR, an individual residing in Benton County, Washington. Plaintiff, vs. COMMONWEALTH MARKETING GROUP, INC., a Pennsylvania Corporation Defendant.	NO. CV-04-5003-AAM PLAINTIFF'S INITIAL DISCLOSURES PURSUANT TO RULE 26(A)(1) JURY TRIAL REQUESTED

TO: Daniel Waggoner
Davis Wright Tremaine LLP
2600 Century Square – 1501 Fourth Avenue
Seattle, Washington 98101-1688

Pursuant to Fed. R. Civ. P. 26(a)(1), Plaintiff James S. Gordon, Jr. makes the following initial disclosures.

A. Fed. R. Civ. P. 26 (a)(1) (A) the name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information;

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Attorney At Law
P.O. Box 202
Richland, Washington 99352
Phone 628-0809 Fax (509) 628-2307

Plaintiffs believe that the following individuals are likely to have discoverable information relevant to disputed facts alleged in the pleadings, on the subjects described below.

1. Mr. James S. Gordon, Jr.
1419 Jadwin Avenue
Richland WA, 99352
509-210-1069

Mr. Gordon may have discoverable information regarding the facts pertinent to this lawsuit, including, but not limited to familiarity with correspondence between Mr. Gordon and the Defendant, information related to the receipt of emails from the Defendant or agents acting at the behest of the Defendant by Mr. Gordon and other users of email services at "gordonworks.com", information related to the subject lines, return addresses, and transmission paths of the emails that are the subject of the Plaintiff's complaint, information related to the Defendant's contention that the Plaintiff "opted in" to receiving the emails that are the subject of the Plaintiff's complaint, and information related to the operation of "gordonworks.com" as it relates to the Plaintiff's contention that "gordonworks.com" is an interactive computer service as that term is defined in RCW 19.190.010 (7).

2. Mrs. Bonnie Gordon
1419 Jadwin Avenue
Richland WA, 99352
509-210-1069

Mrs. Gordon may have discoverable information regarding the facts pertinent to this lawsuit, including, but not limited to information related to the receipt of emails from the Defendant or agents acting at the behest of the Defendant by Mrs. Gordon at an email address at "gordonworks.com", and information related to the Plaintiff's contention that "gordonworks.com" is an interactive computer service as that term is defined in RCW 19.190.010 (7).

3. Mr. James. S. Gordon III
1419 Jadwin Avenue
Richland WA, 99352
509-210-1069

Mr. Gordon may have discoverable information regarding the facts pertinent to this lawsuit, including, but not limited to information related to the receipt of emails

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from the Defendant or agents acting at the behest of the Defendant by Mr. Gordon at an email address at "gordonworks.com", and information related to the Plaintiff's contention that "gordonworks.com" is an interactive computer service as that term is defined in RCW 19.190.010 (7).

4. Mr. Jonathan Gordon

1419 Jadwin Avenue

Richland WA, 99352

509-210-1069

Mr Gordon may have discoverable information regarding the facts pertinent to this lawsuit, including, but not limited to information related to the receipt of emails from the Defendant or agents acting at the behest of the Defendant by Mr. Gordon at an email address at "gordonworks.com", and information related to the Plaintiff's contention that "gordonworks.com" is an interactive computer service as that term is defined in RCW 19.190.010 (7).

5. Ms. Jamila Gordon

725 Roosevelt

Walla Walla WA, 99362

509-526-7180

Ms. Gordon may have discoverable information regarding the facts pertinent to this lawsuit, including, but not limited to information related to the receipt of emails from the Defendant or agents acting at the behest of the Defendant by Ms. Gordon at an email address at "gordonworks.com", and information related to the Plaintiff's contention that "gordonworks.com" is an interactive computer service as that term is defined in RCW 19.190.010 (7).

6. Mr. Robert Pritchett

1952 Thayer Drive

Richland, WA 99352

509-943-2524

Mr. Pritchett may have discoverable information regarding the facts pertinent to this lawsuit, including, but not limited to information related to the receipt of emails from the Defendant or agents acting at the behest of the Defendant by Mr. Pritchett at an email address at "gordonworks.com", and information related to the Plaintiff's contention that "gordonworks.com" is an interactive computer service as that term is defined in RCW 19.190.010 (7).

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7. Ms. Emily Abbey

1407 2nd Ave. West #608

Seattle WA 98119

(206) 217-0466

Ms. Abbey may have discoverable information regarding the facts pertinent to this lawsuit, including, but not limited to information related to the receipt of emails from the Defendant or agents acting at the behest of the Defendant by Ms. Abbey at an email address at "gordonworks.com", and information related to the Plaintiff's contention that "gordonworks.com" is an interactive computer service as that term is defined in RCW 19.190.010 (7).

8. Mr. Lew Reed

871 George Washington Way

Richland WA, 99352

509-942-7608

Mr. Reed may have discoverable information regarding the facts pertinent to this lawsuit, including, but not limited to information related to the subject lines, return addresses, and transmission paths of the emails that are the subject of the Plaintiff's complaint.

B. Fed. R. Civ. P. 26 (a)(1) (B) a copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment;

The Plaintiff's have already provided compact discs containing all of the emails that are the subject of this complaint to the counsel for the Defendant. To the extent further emails are sent to the Plaintiff by the Defendant, or by others acting on behalf or at the behest of the Defendant, the Plaintiff assumes that counsel for the Defendant will have access to those directly from the Defendant. Data compilations demonstrating "gordonworks.com" is an interactive computer service as that term is defined in RCW 19.190.010 (7) are available on the internet at "gordonworks.com." Data compilations demonstrating "gordonworks.com" is used as an email service, further demonstrating "gordonworks.com" an interactive computer service as that term is defined in RCW 19.190.010 (7) are in the individuals listed above.

C. Fed. R. Civ. P. 26 (a)(1) (C) a computation of any category of damages claimed by the disclosing party, making available for inspection and

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copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered;

The computation of damages, including the amounts and the statutory basis for those damages, are set forth in the Plaintiff's Second Amended Complaint.

D. Fed. R. Civ. P. 26 (a)(1) (D) for inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

Not applicable.

Rule 26(a)(1) provides that Initial Disclosures must be made "based on the information then reasonably available." Plaintiff reserves the right to supplement these initial disclosures as relevant information and documents are discovered. Plaintiff does not, however, thereby undertake any obligation to supplement beyond that imposed by the Federal Rules of Civil Procedure.

DATED this 9th day of July, 2004.

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The Honorable Alan A. McDonald

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AUG 12 2004
Randy Gainer

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT RICHLAND

JAMES S. GORDON, JR,
an individual residing in
Benton County, Washington.

Plaintiff,

vs.

COMMONWEALTH MARKETING GROUP, INC.,
a Pennsylvania Corporation

Defendant.

NO. CV-04-5003-AAM

CERTIFICATE OF SERVICE

JURY TRIAL REQUESTED

TO: CLERK OF COURT

AND TO: Randy Gainer
Davis Wright Tremaine LLP
2600 Century Square – 1501 Fourth Avenue
Seattle, Washington 98101-1688

The undersigned hereby certifies and declares under penalty of perjury under the laws of the State of Washington that on August 9, 2004, he caused a copy of the following documents:

(1) Plaintiff's Initial Disclosures Pursuant to Rule 26(a)(1)

DOUGLAS E. MCKINLEY, JR.
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P.O. Box 202
Richland, Washington 99352
Phone 628-0809 Fax (509) 628-2307

(2) Certificate Of Service

to be served upon the following party in the manner indicated:

Daniel Waggoner, attorney for Defendant Commonwealth Marketing Group, Inc. Davis Wright Tremaine LLP 2600 Century Square – 1501 Fourth Avenue Seattle, Washington 98101-1688	(X) ( ) (	Via US Mail Via US Mail, Certified, Return Receipt Requested Via Facsimile Via Federal Express Via Process Service

Executed at Richland, Washington this 9th day of August, 2004.

Douglas E. McKinley, Jr.

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